IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11938 of 2000
with
CIVIL APPLICATION No 5342 of 2001
and
CIVIL APPLICATION No 10789 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVANSHALA TRUST

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:
MR SHIRISH JOSHI for Petitioner
MR HASIT H JOSHI for Respondent No. 1
MS NANDINI JOSHI, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/06/2001

COMMON ORAL JUDGEMENT

Rule. Mr AD Oza with Mr Dave, learned counsel

waives service of Rule for the Gujarat Secondary Education Board and Ms Nandini Joshi, learned AGP waives service of Rule for the State of Gujarat and the District Education Officer.

2. The petitioner-institution was permitted to shift its boarding school from Gadhda in Bhavnagar District to Gopaldham in Jasdan taluka of Rajkot District by the order dated 10.6.1997. The distance between the said two villages is about 22 kms. Pursuant to the said permission, the petitioner shifted the boarding school from Gadhda to Gopaldam with effect from the academic year 1997-98. Thereafter the State Government in the Education Department issued the show cause notice on 16.4.1999 (Annexure "F") calling upon the petitioner-institution to show cause why the permission granted by the Board on 10.6.1997 should not be recalled. The petitioner-institution filed its reply dated 29.4.1999 (Annexure "G"). The petitioner raised various submissions in that reply including the fact that the boarding school was being run in a rented premises at Gadhda where the school was facing several difficulties including political interference and unhealthy competition. After getting the permission to shift the boarding school to Gopaldham, the petitioner-institution handed over possession of the premises at Gadhda to its landlord and shifted the school to Gopaldham. The students also started studying and they were permitted to appear at the SSC examination from the centre in the Rajkot District. It was also pointed out in the reply that there are about 80 students studying in the boarding school at Gopaldham, majority of whom are harijans. The Social Welfare Department is also giving grants to the petitioner for running the boarding school for the students belonging to the harijan community. The Social Welfare Department has also granted permission for shifting the school from Gadhda to Gopaldham. The petitioner also pointed out that in the radius of about 20 to 25 kms. from Gopaldham, there was no other boarding school run by any trust.

3. By communication dated 3.6.1999 (Annexure "I"), the Board informed the petitioner that when the Government sought the opinion of the Board for cancellation of the permission granted earlier on 10.6.1997, at its meeting held on 15.5.1999, the Executive Committee, after giving the petitioner an opportunity of being heard, had resolved to cancel the permission granted earlier and that the petitioner was, therefore, required to start the school again at Gadhda in Bhavnagar District. The petitioner challenged the

said decision by filing Special Civil Application No. 4024 of 1999 which came to be allowed by this Court's judgment dated 1.5.2000 (Annexure "J") mainly on the ground that the impugned communication dated 3.6.1999 did not contain any reasons. This Court, therefore, directed the respondents to pass a fresh order after giving an opportunity of hearing to the petitioner and in case the Board decided to review its earlier order, a reasoned order may be passed. Accordingly, the petitioner was required to remain present before the Executive Committee of the Board. The petitioner submitted its reply dated 19.9.2000 (Annexure "K") reiterating various averments and submissions made in the previous reply dated 29.4.1999 (Annexure "G") and also raised the contention about the power of the Board to review its order. The petitioner also alleged that the previous permission was sought to be reviewed under political pressure and that there was no justification for cancelling the permission already granted in June, 1997.

4. At the hearing before the Executive Committee on 23.10.2000, a representative of the petitioner-institution appeared and submitted that in view of the submissions already made in the written reply, the petitioner had nothing more to add. Thereafter the Executive Committee of the Board passed the impugned order dated 10.11.2000 reiterating its previous decision as per the communication dated 3.6.1999 and gave the following reasons in support of the said decision :-

(i) Under Regulation No. 9(10)(i) of the Gujarat Secondary Education Regulations, 1979, the permission to shift the school premises from one place to another place can be granted only if the two sites are at a distance of upto 1 km. from each other. In the instant case, the distance between the two sites is 22 kms. and, therefore, the permission could not have been granted.

(ii) There was recovery of loan amount pending against the petitioner-institution and that the management had suppressed this issue about recovery of Rs.3,32,000/- while seeking permission in 1997. The shifting from Bhavnagar District to Rajkot District was obtained in order to wriggle out of this recovery which was initiated by the District Education Officer, Bhavnagar.

(iii) There was no need for the new school at

Gopaldham. The petitioner-institution was also running another grantable school at Ambardi at a distance of 3-1/2 kms. from Gopaldham.

(iv) Another school was being run at Gopaldham. The said school was being run without grant-in-aid. After shifting the petitioner-institution from Gadhda to Gopaldham, the petitioner attracted the students of that existing non-grant school and thus the non-grantable school was sought to be converted into a grantable school.

5. At the hearing of this petition, Mr Shirish Joshi, learned counsel for the petitioner has challenged the aforesaid decision. The relevant grounds are taken ad seriatim.

6. As far as the first ground is concerned, Mr Joshi is on firm ground in contending that the relevant regulation relied upon by the Board was introduced in 1999 vide Government Resolution dated 17.7.1999 at Annexure "M" to the petition. Hence, the said regulation should be applied only prospectively and not retrospectively. Admittedly, the Board had earlier granted permission to the petitioner-institution for shifting the school on 10.6.1997 and the said decision was acted upon. The amendment to the regulations and that too by executive instructions contained in the Government Resolution dated 17.7.1999 could never be applied retrospectively. Hence, the reasoning adopted by the Board that the permission granted in July, 1997 was in violation of regulation No. 9(10(i) introduced on 17.7.1999 can never be valid.

7. As far as the second ground is concerned, Mr Joshi for the petitioner has submitted that shifting of the petitioner-school from Bhavnagar District to Rajkot District can never exonerate the petitioner-institution from its liability, if any, regarding refund of the loan amount. It is submitted that the petitioner has a genuine and bonafide dispute regarding the recovery proposed by the District Education Officer, Bhavnagar, but in any case the petitioner-institution is prepared to file an undertaking that after the petitioner gets an opportunity of being heard, if the District Education Officer, Bhavnagar/Rajkot passes any order for recovery of any amount, subject to its right to challenge such orders, the petitioner-institution shall pay such amount to the Government without raising any dispute about the jurisdiction of the District Education Officer, Rajkot to

make any recovery in respect of the period during which the petitioner was running its boarding school in Bhavnagar District.

It appears to the Court that while the anxiety of the Board that public funds may not be put to jeopardy on account of shifting is required to be appreciated, in view of the clear cut legal position and also in view of the aforesaid undertaking which the Managing Trustee of the petitioner-trust shall file within 15 days from today, there does not appear to be any justification for cancellation of the permission granted as far back as in June, 1997 merely on the ground that there is an outstanding recovery against the petitioner-institution.

8. As regards the ground that the petitioner-institution is also running another educational institution at a distance of 3-1/2 kms from Gopaldham, Mr Joshi for the petitioner points out that the petitioner-institution is running a regular secondary school at village Ambardi and that the said school is quite different from the boarding school in question which is being run at Gopaldham. The boarding school caters mainly to the students belonging to the harijan community and that there is no question of competition between the said two schools.

There is considerable substance in this submission also.

9. As regards the ground that the petitioner is going to convert a pre-existing non-grantable school into a grantable school, Mr Joshi points out from the averments made in the petition that had the petitioner been given a proper show cause notice setting out all the relevant grounds on the basis of which the Board was proposing to cancel the previous permission, the petitioner would have pointed out that there was a girls' school being run at Gopaldham which was a grantable school and that the same was closed in May, 1997 i.e. before the permission was granted to the petitioner-school for shifting in June, 1997. In the boarding school in question being run by the petitioner-institution at Gopaldham, boys are admitted and, therefore, there was no question of any competition with the school which in any case had closed down in May, 1997. It is, therefore, submitted that there was no question of unhealthy competition at any point of time.

10. Having heard the learned counsel for the parties and having gone through the pleadings on record, it

appears that the reply affidavit filed by the Secretary of the Gujarat Secondary Education Board does not dislodge any of the factual averments made in the petition and pointed out hereinabove, and considering the settled legal position that the amendment to the regulations made in the year 1999 cannot be applied retrospectively to recall the permission granted in June, 1997, this appears to be a fit case for interference by this Court with the impugned order dated 10.11.2000 (Annexure "L") read with the resolution of the Executive Committee of the Board passed in its meeting held on 23.10.2000 (Annexure "N") and the consequential order dated 18.11.2000 (Annexure "O") passed by the District Education Officer, Rajkot as illegal and violative of Article 14 of the Constitution and the same are, therefore, quashed and set aside.

11. Since the main petition is being disposed of, Civil Application No. 5342 of 2001 filed by the Board for vacating the ad-interim injunction does not survive and is accordingly disposed of.

12. As far as Civil Application No. 10789 of 2000 is concerned, Mr SG Barot, learned counsel appearing for the applicants who are teachers in the petitioner's boarding school at Gopaldham states that since the teachers in the said school have not been paid any salary and allowances for the period between July, 1997 and October, 1999, appropriate directions are required to be given to the petitioner-school as well as to the Government authorities.

Ms Nandini Joshi, learned AGP appearing for the State of Gujarat and the District Education Officer submits that since the entire question of permission to shift the school from Gadhda in Bhavnagar District to Gopaldham in Rajkot District was under reconsideration and since the Board had recalled the said permission in June, 1999 and again in November, 2000, the salary grant was not released and that the respondent authorities had not committed any error in not paying the school management salary grant.

13. In view of the fact that the orders cancelling the permission for shifting the school are set aside as per the aforesaid directions, the respondents shall treat the petitioner-institution as a grantable institution and release all the grants due for the period from July, 1997 onwards, if not already paid, to the petitioner-institution. This direction shall be complied with within two months from the date of receipt of the

writ of this Court or a certified copy of this order, whichever is earlier.

In any case, during the aforesaid period, the District Education Officer, Bhavnagar shall finally decide the question about recovery to be made from the petitioner-institution after disclosing to the petitioner-institution the grounds on which the recovery is ordered to be made and after considering the petitioner's reply to the same, the concerned District Education Officer/s shall pass appropriate orders in accordance with law as expeditiously as possible and in any case within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. The amount which may be ordered to be recovered from the petitioner shall be adjusted against the amount/s which may be payable by the respondents to the petitioner-institution for the aforesaid period i.e. from July, 1997 onwards and the balance amount, if any, shall be paid to the petitioner-institution within 15 days from the date of the decision. Accordingly the petitioner-institution shall also pay the arrears of salary to the teachers of its boarding school at Gopaldham latest within three months from today.

14. The petition is accordingly allowed. Rule is made absolute in terms of the declaration made in para 10 hereinabove with no order as to costs.

15. Civil Application No. 10789 of 2001 stands disposed of in terms of the aforesaid directions in para 13 of this judgment.

16. Civil Application No. 5342 of 2001 is disposed of as infructuous.

17. The undertaking to be filed by the Managing Trustee of the petitioner institution shall be in appropriate terms in light of the statement as recorded in para 7 hereinabove and the directions contained in para 13 hereinabove.

(M.S. Shah, J.)

sundar/-